

Joint Committee on Boards, Commissions and Consumer  
Protection

BACKGROUND PAPER FOR  
HEARING  
JANUARY 5, 2005

STRUCTURAL PEST  
CONTROL BOARD

**BACKGROUND, IDENTIFIED ISSUES, AND QUESTIONS**

**BRIEF OVERVIEW OF THE STRUCTURAL PEST  
CONTROL PROFESSION AND THE STRUCTURAL  
PEST CONTROL BOARD**

The purchase of a home is often the first time a consumer has any contact with the profession of pest control, as lenders will usually require a Wood Destroying Pests and Organisms Inspection Report prior to the sale of a property. In addition to the financial lender, the consumer relies heavily on this report, and on any subsequent corrective work, as protection when making what is often the largest investment of his or her life. Further, many pest control methods involve pesticides and gases, which when misapplied or misused can cause serious adverse health consequences and even death. In short, regulation of this industry in some form is almost universally agreed upon.

The Structural Pest Control Board (Board) within the Department of Consumer Affairs (DCA) regulated more than 25,700 individuals who are licensed as “structural:” pest control operator (3,341), field representatives (10,120), or applicators (12,272). The Board also registers structural pest control companies, of which there are 2,395. The Board issues licenses in three separate areas of pest control: Branch 1 – Fumigation (whole house treatment with lethal gas); Branch 2 – General Pest (ants, cockroaches, mice, rats, etc.); and, Branch 3 – Wood Destroying Pests and Organisms (termites, wood boring beetles, dryrot, fungus, etc.). Until recently, there was a Branch 4 – Wood Roof Cleaning and Treatment, but this category was eliminated following the last sunset review cycle.

Within the three branches, the Board issues licenses for applicator, which is the entry-level license type for Branch 2 and 3 (the Board does not issue applicator licenses for Branch 1), field representative, and operator. To obtain a license as an applicator, the only requirement is to pass a written examination; there are no education or experience prerequisites. There are experience requirements for field representative license applicants, in addition to the written examination, while operator license applicants must complete a Board-approved education course in addition to more extensive experience and examination requirements.

Unlike most professional licensing boards, the Structural Pest Control Board does not generate the bulk of its funds from licensing fees. In fact, the Board does not currently even charge a licensing fee for its largest class of licensees – the applicators. Rather, the Board generates the vast majority of its revenue from “activity filing fees” – small fees (\$1.50) that are assessed each time a pest control company inspects a property or completes work on a property. Of the \$3,421,376 in Support Fund revenue (the Board’s primary fund) for the most recent year (2003/04), \$2,706,073 came from these filing fees. An additional \$462,911 came from licensing fees (\$30 for field representative, \$150 for operator, both renewed every three years at the same price), and the rest came from an assortment of fines, penalties and cost recovery awards. The Board expended \$3,138,966 last year, and has a reserve of \$2,318,469, which equates to an eight month reserve.

In addition to its primary Support Fund, the Board has two other funds: the Education and Enforcement Fund, and the Research Fund.

The Education and Enforcement Fund is funded through \$4 of a \$6 fee charge for each pesticide use stamp purchased from the Board. This fund is used primarily to fund an interagency agreement with the Department of Pesticide Regulation (DPR) to enforce pesticide use violations for the Board. DPR then turns around and uses this money to reimburse county agricultural commissioners, who actually carry out this enforcement mandate. The Education and Enforcement Fund had revenues of \$294,930 in 03/04, and expenditures that same year of \$271,899.

The Research Fund gets the remaining \$2 of the \$6 pesticide use stamp fee to award research grants in the field of structural pest control. The Board waits for the funds to accumulate to a sufficient level to fund a research project. Because it receives approximately \$100,000 in revenue per year from this source, the Board will award a contract every third year or so of roughly \$350,000.

During the General Fund shortfall of 2002/03, the Board “loaned” the General Fund \$2 million out of what was then a \$3 million reserve to help address the state’s budget deficit. Like other special fund boards, the Board reports that it has no formal agreement relative to this loan, and has been informed that the funds would be repaid in the future, if the Board states it had immediate need of repayment of the loan. In that case, the Board would have to provide justification of the need for repayment.

The Board consists of seven members, with a public member majority. Of the seven members, the Governor appoints the three professional members and two of the public members, while the Senate Rules Committee and the Speaker of the Assembly each appoint one public member. There is currently one professional member vacancy. The Executive Director is Kelli Okuma.

| <b>Member's Name</b> | <b>Appointed By</b>     | <b>Type</b>  | <b>Appointment Date</b> | <b>Expiration Date</b> |
|----------------------|-------------------------|--------------|-------------------------|------------------------|
| Cris Arzate          | Senate Rules Committee  | Public       | 4/21/04                 | 6/1/08                 |
| Jean Melton          | Governor Appointee      | Professional | 6/26/01                 | 6/1/05                 |
| Bill Morris          | Governor Appointee      | Public       | 6/26/01                 | 6/1/05                 |
| Michael Roth         | Governor Appointee      | Public       | 6/26/01                 | 6/1/05                 |
| Mustapha Sesay       | Speaker of the Assembly | Public       | 1/12/01                 | 6/1/04                 |
| Ken Trongo           | Governor Appointee      | Professional | 10/02/97                | 1/15/07                |
| Vacant position      | Governor Appointment    | Professional |                         | 6/1/07                 |

## **PRIOR SUNSET REVIEW**

The Board was first reviewed in 1996/97, and again in 1999/00. The last review focused on false and misleading advertising, low examination pass rates, and the “over-calling” and “under-calling” of pest work, among other things.

Below are all of the recommendations made by the Committee during the last review of the Board:

- 1) The structural pest control industry should continue to be regulated.
- 2) The Structural Pest Control Board should be continued.
- 3) The Board should complete implementation of the plan to deal with the problem of deceptive advertising by pest control companies, including the adoption of regulations regarding illegal false or misleading advertising.
- 4) The Board should establish a plan to address both “over-calling” (recommending excessive work) and “under-calling” (failing to identify problems needing corrective work) and explore joint enforcement efforts with the Department of Real Estate.
- 5) The entire examination and licensing programs should be reviewed by the Board, and a report should be provided to the Committee by October 1, 2000, on any changes that would be appropriate for these programs.
- 6) The Board should provide a progress report to the Committee by October 1, 2000, on completing the occupational analyses for specified examinations.

- 7) The Board should address the very high and very low passage rates of the Board's examinations along with its review of the entire licensing and examination programs, and report to the Committee by October 1, 2000, on any changes which may be appropriate.
- 8) The Board should address whether the current mandatory continuing education is sufficient to assure continuing competency of the Board's licensees, and report to the Committee by October 1, 2000, on whether examination for continuing competency would be appropriate.
- 9) The Board should increase office record checks of pest control companies to assure that inspections and work being completed is in compliance with current law and regulations of the Board. The Board should seek an additional investigator to increase office record checks.
- 10) The Board should increase its spending authority on its enforcement program. The Board should report to the Committee by October 1, 2001, on whether stamp fees should be reduced. This should allow a sufficient opportunity for the Board to determine its revenue base after implementing its new report-filing program, and consider other alternatives to the current stamp fee charged to pest control companies.
- 11) The Board should maintain the research fund, but the responsibility for determining which research project should be funded should be transferred to an academic/research institution, that is far more qualified to deal with contractual issues surrounding research projects involving entomology, chemicals, and pest control devices.

## **ADDITIONAL BACKGROUND**

In the intervening years between the first sunset review of 1996/97 and the last review of 1999/90, the California Public Interest and Research Group (CALPIRG) issued a report charging some 150 pest control companies with deceptive advertising relating to the use of pesticides, and charged the Board and the Office of the Attorney General with failing to adequately address this issue. In response, the Board formulated an eight-point plan, including promulgating regulations specifically defining false and misleading advertising. During the 1999/90 review, the Joint Legislative Sunset Review Committee (now this Committee) recognized the Board was making progress on this issue, and recommended that the plan be fully implemented, and for the Board to provide a progress report on implementation of this plan in the following year.

Another issue discussed during the last review related to the many different license classifications and their correlating examinations, and the very low passage rate for most of those examinations. At the time of the last sunset review, the Board had eleven different licensing exams spread across the three classes of licenses (applicators, field representatives, and operators) in what was then four different branches of pest control

(Branch 1/Fumigation, Branch 2/General Pest, Branch 3/Wood Destroying Pests & Organisms, and Branch 4/Wood Roof Cleaning and Treatment). The Committee recommended that all of the examination and licensing programs be reviewed by the Board with an eye toward combining some of the license categories and/or examinations.

In the four years prior to the last sunset review (the years 1995/96 through 1998/99), the passage rate for the field representative averaged between 32% and 37%, while the passage rate for the operator license averaged between only 24% and 29%. The passage rate for the entry-level applicator license exam, on the other hand, was between 85% and 88%, even though this is the only license category that has no experience or education requirements to supplement the test. The Committee recommended that the Board review the exams and the requirements for licensure in the context of the low passage rates. In looking at the very high pass rate for applicator and the low pass rates for field representative and operator, the Committee was concerned with whether the minimum requirements for the various license categories were adequate and whether they assure that licensees have the minimum knowledge and skills necessary to perform competently.

“Under-calling” (failing to identify problems in need of corrective work), and “over-calling” (recommending or performing excessive work), have always been a major source of consumer complaints in the field of pest control. The Committee recommended that the Board establish a plan to address both areas and explore joint enforcement efforts with the Department of Real Estate, which the Board reports it has done, and is utilizing the citation and fine program to deter future violations.

## **SIGNIFICANT CHANGES SINCE LAST REVIEW**

The Board reports the following major changes since the last sunset review:

- 1) Elimination of the requirement to file actual inspection reports and completion notices with the Board.
- 2) On-line filing of inspection and completion activities with public access to all records.

Regarding 1) and 2) above, pest control companies were previously required to file all inspection reports and completion notices with the Board, which amounted to an overwhelming and unnecessary amount of paperwork. Now, pest control companies simply submit “activity” information to the Board – letting the Board know that they performed an inspection or completed some work on a particular structure, and paying a fee for each activity. This change also enabled the Board to accept activity filings on-line, making compliance easier on pest control companies that choose to utilize the internet.

- 3) Enacted regulations concerning false and misleading advertising.

This was the principle component of the plan to address false and misleading advertising the CALPIRG report highlighted. In the 1990s, some pest control companies were making claims, mainly in Yellow Page advertisements, about pest control devices that were false and misleading. Often, these advertisements made false claims about a pest control device that could eradicate pests without toxic gases or pesticides. The regulations adopted by the Board in October, 2001, prohibited, in quite some detail, the use of unfair, deceptive, untrue or misleading representations, claims, statements, or advertisements by licensees of the Board.

- 4) Updated Branch 2 operator examination.
- 5) Elimination of Branch 4 – Wood Roof Cleaning and Treatment as a license category.
- 6) Combining of the Branch 2 and 3 applicator examinations

Regarding 5) and 6), these changes were in response to the Committees' recommendation to review the seemingly excessive number of licenses and examinations and see if any changes were appropriate. The Board determined that the responsibilities of Branch 4 overlapped substantially with Branch 3 (Wood Destroying Pests and Organisms), and eliminated Branch 4 and all three of its license examinations (applicator, field representative, and operator). Additionally, because the tests for the entry-level applicator license were so similar in Branch 2 and Branch 3, the two examinations could be combined. These two actions brought down the total number of tests administered by the Board from eleven to seven.

- 7) Implemented Livescan criminal history checks of all license applicants.

## NEW ISSUES

**ISSUE #1:** The Governor's California Performance Review (CPR) recommended that the Structural Pest Control Board be eliminated, and its license functions and oversight responsibilities for structural pest control businesses be transferred to the Department of Pesticide Regulation within the California Environmental Protection Agency, or its successor.

**Issue #1 question for the Board and DCA:** *Should the Board be eliminated and its function transferred to the Department of Pesticide Regulation? Why or why not? What is the necessity of having a separate Board regulate structural pest control, while the rest of the pest control industry is regulated by the Department of Pesticide Regulation?*

**Background:** Governor Schwarzenegger created the California Performance Review (CPR) in February of 2004 through an executive order to "restructure, reorganize and reform state government to make it more responsible to the needs of its citizens and

business.” One of its more than 1,200 recommendations included in the report, which was completed in August, was to eliminate the Board and transfer its functions to the Department of Pesticide Regulation (DPR). According to the CPR report, DPR is recognized the U.S. Environmental Protection Agency and state law as the lead agency responsible to regulate the possession, sale and use of all pesticides in California. DPR licenses about 4,100 pest control businesses and 18,000 individuals including pest control companies, gardeners, pesticide brokers, commercial applicators and agricultural pest control advisors spraying pesticides outside of the home.

The CPR report states that DPR and the Board have parallel regulatory and enforcement authorities, and that California is one of only five state that do not have consolidated certification, training, and enforcement programs for agricultural, non-agricultural and structural pest control. According to the CPR report, combining licensing and oversight functions over the state’s pesticide management activities in DPR would increase efficiency and result in consistent, statewide administration of pesticide regulations and statutes.

The CPR notes that there is no General Fund savings from this recommendation (both DPR and the Board are funded through fees, not the General Fund), but estimates special fund savings at \$512,000 annually from transferring the functions performed by the part-time Board to the DPR, consolidating the examination and licensing programs, and eliminating five positions that perform some of the Board’s functions and provide support for Board member activities and meetings.

**ISSUE #2:** Passage rates for Board exams, an issue in the last sunset review, continue to be very low. While the Board is continuing to look at this issue, completing occupational analyses for most of its exams with the remaining occupational analyses pending, low scores raise troubling concerns about the adequacy of preparation for pest control license applicants.

**Issue #2 question for the Board:** *What further steps can be taken to improve the passage rate for the Board's examinations? Do the low passage rates indicate applicants are not adequately trained prior to sitting for licensure?*

**Background:** In the last sunset review, the Committee identified the low passage rates for the field representatives and operators as a concern, and directed the Board to conduct occupational analyses of these examinations and also review whether any changes should be made to licensure requirements or any other aspect of the examination and licensing process. For the four years prior to the last review (95/96 to 98/99), the average pass rate for the operator exam was between 24% and 27%; the average pass rate for this exam from 2000/01 to 2003/04 was virtually unchanged at 25% to 26%. Similarly, the field representative exam’s average pass rate from 95/96 to 98/99 was 32% to 37%; it dropped to between 25% and 32% during the 00/01 to 03/04 period. The only real significant change was with the applicator license exam, which during the last review

was very high at between 85% and 88% from 95/96 to 98/99; in 2000/01 it remained at 85%, but then dropped to 44% in 2001/02, and 51% in both 02/03 and 03/04.

Pursuant to the request of the Committee, the Board asked the Office of Examination Resources (OER) in the DCA to conduct an occupational analysis for each of its licensing examinations. According to the Board, OER completed the analyses and validation reports for the tests in Branch 2 in 2001 and for Branch 3 in 2002 and 2003. OER was working on the Branch 1 series when it experienced staffing shortages that prevented it from completing the review. The Board reports that it is working with OER to finalize the occupational analyses.

**ISSUE #3:** The Board experienced a setback in its efforts to have an academic institution prepare its RFPs for grants from its Research Fund when U.C. Berkley's Forest Products Laboratory botched its first RFP after being chose as the responsible entity, and then budgetary issues led to U.C. Berkeley to close the Forest Products Laboratory due to budget cutbacks.

**Issue #3 question for the Board:** *Does the Board continue to believe, in light of its experience with the Forest Products Laboratory, that an academic/research institution is better able to determine which projects should be funded and to assume the management of these research grant contracts?*

**Background:** During the last sunset review, the Board indicated to Committee staff that the function of choosing appropriate research projects does not fit well within the Board's regulatory role, and they do not always have the expertise to determine which research projects are more appropriate than others. The Board thought that an academic/research institution with expertise in the areas of structural pest control, entomology and chemical usage would be more qualified to make such decisions and be able to adequately monitor such projects. The Committee concurred in the Board's recommendations, and legislation was adopted to allow the Board to identify another entity to assume the responsibility for determining research projects and managing the resulting contracts. The Board chose the University of California, Berkeley, Forest Products Laboratory (FPL). When the FPL released its first Request For Proposals, the DCA legal counsel determined the RFP was flawed with inconsistencies and the RFP was withdrawn. Then Berkeley closed the FPL due to budget cuts, and the Board was back to square one.

The Board reports that it is currently in the process of re-releasing the RFP, and will explore options to identify another entity to assume the responsibilities of monitoring the research grant fund and projects.